

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
SEP 04 2008

[Signature]

LUCAS JOHNSON,

Plaintiff,

-vs-

BOB DOOLEY, Warden, Mike Durfee State Prison;
TRAVIS TJEERDSMA;
VELMA SUDBECK;
LISA McFLETCHER;

Defendants.

CIV. 07-4191

ORDER ON MOTION

Pending is Plaintiff's Motion to Dismiss (Doc. 24) his case without prejudice. Defendants have no objection to the motion but request the case be dismissed with prejudice. Pursuant to Fed. R. Civ. P. 41(a)(2) the dismissal shall be without prejudice.

As to Plaintiff's inquiry contained in his motion regarding payment of the filing fee, both the legislative history and the case law interpreting the Prison Litigation Reform Act instruct that prison litigants, like any other litigants, do not get their filing fees back if their cases are dismissed. The obligation to pay a filing fee accrues the moment a plaintiff files his Complaint with the Court. *Anderson v. Sundquist*, 1 F.Supp.2d 828, 830 n. 5 (W.D. Tenn. 1998). One of the purposes of the Prison Litigation Reform Act is to

require the prisoners to pay a very small share of the large burden they place on the Federal judicial system by paying a small filing fee upon commencement of lawsuits. In doing so, the provision will deter frivolous inmate lawsuits. The modest monetary outlay will force prisoners to think twice about the case and not just file reflexively. Prisoners will have to make the same decision that law abiding Americans must make: Is the lawsuit worth the price?

Roller v. Gunn, 107 F.3d 227, 231 (4th Cir. 1997) (quoting 141 Cong. Rec. at S7526 (May 25, 1995)).

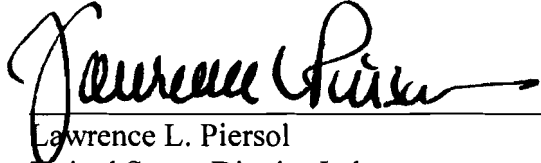
See also In Re: Tyler, 110 F.3d 528, 529-30 (8th Cir. 1997) (prisoner will be assessed full filing fee even if his case is dismissed because "the PRLA makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal."). The filing fees paid, therefore, will not be refunded to the Plaintiff and Plaintiff remains responsible for the payment of the balance of the filing fee.

Accordingly, it is hereby

ORDERED that Plaintiff's Motion to Dismiss (Doc. 24) is GRANTED and the case is dismissed without prejudice.

Dated this 4th ~~SEPTEMBER~~ day of ~~August~~, 2008.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

By: Shelly Margulies, Deputy
(SEAL)